



POLICE DEPARTMENT

November 9, 2011

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Ralph Tavela
Tax Registry No. 924541
43 Precinct
Disciplinary Case No. 2009-313

The above-named member of the Department appeared before me on August 18, 2011, charged with the following:

1. Said Sergeant Ralph Tavela¹, while assigned as the supervisor to the Conditions Unit of the 43rd Precinct, on or about April 18, 2008, while on-duty, in the vicinity of Castle Hill Avenue and Gleason Avenue in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant failed to properly instruct the police officers assigned to the Conditions Unit during the arrest process of four individuals known to the Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Sergeant Ralph Tavela, while assigned as the supervisor to the Conditions Unit of the 43rd Precinct, on or about April 18, 2008, while on-duty, in the vicinity of Castle Hill Avenue and Gleason Avenue in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant improperly signed the arrest paperwork of an individual or individuals known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by John D'Alessandro, Esq.

¹ The correct spelling of Respondent's surname is "Tavella."

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. The Department moved to dismiss Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on April 18, 2008, Respondent was on duty assigned to the 43 Precinct. He was scheduled to perform a 1450 hours to 2347 hours tour of duty as supervisor of the Conditions Unit supervising Police Officers Druilio Rivera, Desmond Albercott and Sarah Brauer (the team). Between 2010 hours and 2030 hours, the team arrested four men for Criminal Possession of Marijuana. The four men who were arrested were Person A, Person B, Person C and Person D. The parties stipulated that these four men were transported to the 43 Precinct and that the 43 Precinct Command Log shows that they were brought into the station house at 2035 hours, and that at 0415 hours on April 19, 2008, the four prisoners were transported to Bronx Central Booking.

The parties stipulated into evidence the paperwork that was prepared by each of the arresting officers regarding each of the four arrestees. The arrest paperwork for each arrestee consists of the Criminal Court Complaint, the Supporting Deposition, the

Marijuana Field Test Report - Bronx, the Supplemental Fact Sheet, the Case Ready Checklist, and the Activity Log entry made by the arresting officer.

Officer Albergottie prepared the arrest paperwork regarding the arrests of Person A[Department's Exhibit (DX) 1] and Person D (DX 4); Officer Rivera prepared the arrest paperwork regarding Person B(DX 2); and Officer Brauer prepared the arrest paperwork regarding Person C (DX 3).

Finally, the parties stipulated that after he had performed two hours of supervisory overtime (the maximum post-tour overtime he was permitted to perform under an overtime "cap" that was in place at the 43 Precinct), Respondent signed out at 0147 hours on April 19, 2008, left the 43 Precinct, and went home.

The Department's Case

The Department called Lieutenant Edward Gonzalez as its sole witness.

Lieutenant Edward Gonzalez

Gonzalez, who is assigned to Internal Affairs Bureau (IAB) Group 22, testified that IAB opened an investigation regarding Respondent because when Person A, Person B, Person C and Person D were arraigned in Criminal Court, the judge who presided at their arraignments observed that the supervisor signatures on the Supporting Depositions and the Marijuana Field Test Reports for each of these four defendants appeared to be different signatures. The judge then dismissed the charges against the four defendants.

Gonzalez conducted official Department interviews of Officers Rivera, Albergottie and Brauer. He also conducted an official Department interview of Respondent.

With regard to the arrest paperwork for Person A (DX 1), the purported signatures of Respondent that appear on the Supporting Deposition, the Supplemental Fact Sheet and the Case Ready Checklist are not Respondent's actual signature, but the signature of Respondent that appears on the Marijuana Field Test Report is his actual signature.

With regard to the arrest paperwork for Person B (DX 2), the purported signatures of Respondent that appear on the Supporting Deposition, the Marijuana Field Test Report, the Supplemental Fact Sheet and the Case Ready Checklist were not actually signed by Respondent.

With regard to the arrest paperwork for Person C (DX 3), the purported signature of Respondent that appears on the Marijuana Field Test Report is not Respondent's actual signature, but the signatures of Respondent that appear on the Supporting Deposition, the Supplemental Fact Sheet and the Case Ready Checklist are his actual signatures.

With regard to the arrest paperwork for Person D (DX 4), the signatures of Respondent that appear on the Supporting Deposition, the Marijuana Field Test Report, the Supplemental Fact Sheet and the Case Ready Checklist are all his actual signatures.

Gonzalez testified that as the supervisor of the Conditions Unit, if officers assigned to the Unit made arrests, Respondent was required to assist in processing the

arrests at the precinct in that he “helps the desk officer out in processing the arrests.” He explained that Respondent would help out the desk officer in processing the arrests made by the officers assigned to the Conditions Unit because “the desk officer might be dealing with other arrests” that were made by officers assigned to that platoon. Gonzalez further testified that as the supervisor of the Conditions Unit, Respondent was required to review the arrest processing paperwork prepared by the officers assigned to the Conditions Unit “provided the paperwork is completed.”

Gonzalez testified that, as far as he knew, before Respondent signed out at 0147 hours and left the 43 Precinct, after he had performed the maximum two hours of overtime he was permitted to perform under the “cap” that was in place, Respondent did not issue any instructions to Rivera, Albergottie and Brauer, and Respondent did not inform the desk officer that three officers assigned to the Conditions Unit were still preparing arrest processing paperwork regarding four prisoners being held inside the 43 Precinct. Gonzalez determined that the four prisoners were held inside the 43 Precinct for nearly eight hours before they were transported to Bronx Central Booking.

Gonzalez testified that Respondent should have signed off on all paperwork that was completed by the three officers before Respondent left at 0147 hours. With regard to any paperwork that had not yet been completed by the three officers before Respondent left at 0147 hours, Gonzalez testified that the officers “should take it to another supervisor to sign, to the desk officer” or to “an anti-crime or a second Conditions sergeant within the command that would then authorize these arrests.” When Gonzalez was asked whether, as Respondent was about to leave, he should have instructed Rivera, Albergottie and Brauer “to get someone else to sign their paperwork,” Gonzalez

answered, "Not necessarily," because the need to have a supervisor verify their arrests by signing their paperwork was "common sense" and "common knowledge" among officers. Gonzalez testified that as Respondent was about to leave he should have told the desk officer that three officers assigned to the Conditions Unit were still preparing arrest processing paperwork regarding four prisoners being held at the 43 Precinct.

On cross-examination, Gonzalez confirmed that because he did not interview the desk officer who was on duty when Respondent left the 43 Precinct at 0147 hours, he does not know whether or not Respondent told the desk officer that three officers assigned to the Conditions Unit were still preparing arrest processing paperwork regarding four prisoners being held at the 43 Precinct. Gonzalez agreed that it was possible that Respondent had told the desk officer this because Gonzalez' investigation did not uncover any information that Respondent had not told the desk officer that three Conditions Unit officers were still inside the 43 Precinct. Gonzalez also agreed that the Patrol Guide requires the desk officer to sign off on an arresting officer's paperwork unless the immediate supervisor of the arresting officer offers to assume that responsibility as a courtesy to the desk officer. Gonzalez further agreed that since the Patrol Guide does not delineate the duties of the Conditions Unit sergeant, with regard to arrest paperwork prepared by officers assigned to the Conditions Unit, "there is really no clear line" as to what the duties of the Conditions Unit sergeant are regarding arrest paperwork prepared by Conditions Unit officers. Gonzalez testified that the Conditions Unit sergeant should "augment the desk officer and assist the desk officer in processing arrests so that the desk officer doesn't become overwhelmed with an inordinate amount of work."

Respondent's Case

Respondent called Lieutenant Cosmo Palmieri as a witness and Respondent testified in his own behalf.

Lieutenant Cosmo Palmieri

Palmieri, who is assigned as the Integrity Control Officer (ICO), 43 Precinct, testified that Respondent, as the Conditions Unit sergeant, and the supervisors of other teams, such as the SNEU team and the Impact team, are routinely allowed two hours of post-tour overtime to supervise the processing of routine arrests made by members of their team in order "to alleviate some of the work for the desk, otherwise the desk gets overwhelmed with the volume of arrest that are brought in, but any arrest paperwork that's not finished, the desk does have to finish." Palmieri agreed that every officer assigned to the 43 Precinct "should" understand that any arrest paperwork that has not been finished by a team supervisor must be finished by the desk officer because the Patrol Guide requires it and because they should have been trained at the Police Academy that in the absence of their supervisor they must bring completed arrest paperwork to the desk officer. Palmieri also agreed that a team supervisor can only work past two hours supervising the processing of arrests made by members of their team if the supervisor seeks and obtains permission from a lieutenant or a captain, and that to obtain such permission "it has to be some sort of unusual case." Palmieri confirmed that almost every day officers assigned to the 43 Precinct teams bring completed arrest paperwork

that was not finished by a team supervisor who has left for the day, to the desk officer to be signed.

On cross-examination, Palmieri confirmed that the 43 Precinct's informal policy of routinely allowing team supervisors two hours of post-tour overtime, in order to supervise the processing of routine arrests made by their team for the purpose of alleviating some of the work for the desk officer so that the desk officer does not get overwhelmed by the volume of arrests, is not a Departmental policy and has not been memorialized in writing.

On redirect examination, Palmieri agreed that officers should not have to be reminded that after their supervisor has left, arrest paperwork that has not been signed by their supervisor must be brought to the desk officer because doing this is "standard procedure."

Respondent

Respondent, a 12-year member who was assigned to the 43 Precinct upon his promotion to sergeant five years ago, testified that he was initially assigned as the 43 Precinct Impact Unit sergeant and that after one year he was assigned as the Conditions Unit sergeant.

Regarding the April 18, 2008, arrests of Person A, Person B, Person C and Person D by his team, Respondent recalled that arrest processing began as soon as they arrived back at the 43 Precinct. His tour of duty was scheduled to end at 2347 hours but as supervisor of the Conditions Unit he was permitted to stay two more hours to supervise the arrest processing. He opined that arrest

processing can take anywhere from two hours to 12 hours and that it was not unusual for arrest processing to take 12 hours and it happens quite often. Before he signed out at 0147 hours on April 19, 2008, and left the 43 Precinct, he signed whatever paperwork was ready at that point in time. As for paperwork that was not ready for him to sign at the time he was about to leave, he testified that “most” of the officers on the team “have three to five years” experience and, therefore, they knew that when he was not there, they had to bring their paperwork to the desk officer to be signed. That is why he did not feel there was a need for him to instruct the officers to bring their paperwork to the desk officer to be signed.

He testified that as of April 19, 2008, he had been supervising Rivera, Albergottie and Brauer for about “a month and a half” but that during that period of time the team had made multiple arrests on 25 to 30 occasions. On those 25 to 30 occasions, because he was permitted to remain no more than two hours to supervise the arrest processing, some paperwork was not ready for him to sign when he left about “95 per cent of the time.” He testified that whenever officers on the team are still completing arrest paperwork at the time he leaves the stationhouse, he drops his overtime slip off at the front desk and informs the desk officer that officers on the team are still completing arrest paperwork.

On cross-examination, Respondent agreed that prior to signing out at 0147 hours he did not instruct the officers on the team to bring their unfinished paperwork to the desk officer because he did not believe that he had to issue such an instruction to experienced officers who he had been supervising for over a month, who were familiar with arrest

processing paperwork, and who knew that only a supervisor could sign off on the lines that were designated "Supervisor" or "Signature of Desk Officer" (DX 1-4).

FINDINGS AND ANALYSIS

Specification No. 2

The Department moved to dismiss this charge. The Assistant Department Advocate (the Advocate) stated that based on further investigation, the Department has determined that it cannot prove that Respondent improperly, inappropriately or inaccurately signed any of the arrest paperwork prepared by Police Officers Druilio Rivera, Desmond Albergottie and Sarah Brauer regarding the arrests of Person A, Person B, Person C and Person D.

It is recommended that the Department's motion to dismiss this charge be granted.

Specification No. 1

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he failed to properly instruct Officers Rivera, Albergottie and Brauer, during the arrest processing of Person A, Person B, Person C and Person D that they had to bring their unfinished paperwork to the desk officer.

The facts regarding this charge are largely not in dispute. It is not disputed that even though a two-hour supervisory post-tour overtime "cap" was in place at the 43 Precinct, during the two-hour period before he left, Respondent signed all of Officer

Albergottie's arrest paperwork regarding the arrest of Person D (DX 4); and that with regard to the arrest paperwork for Person C (DX 3), Respondent signed the Supporting Deposition, the Supplemental Fact Sheet and the Case Ready Checklist, and only the signature that appears on the Marijuana Field Test Report is a forgery of Respondent's signature. Clearly, someone forged Respondent's signature on the Marijuana Field Test Report relating to Person C; and on all of the arrest paperwork relating to Person B(DX 2); and on all of the arrest paperwork relating to Person A (DX 1) except for the Marijuana Field Test Report.

Finally, it is not disputed that when Respondent was about to leave, he did not instruct the officers that they had to go to the on duty desk officer to have their arrest paperwork signed.

The Advocate argued that before Respondent left the 43 Precinct he had a duty to instruct Rivera, Albergottie and Brauer that they had to go see the on duty desk officer to have their arrest paperwork signed, that his failure to so instruct them constituted conduct prejudicial to the good order, efficiency or discipline of the Department.

I find Respondent Not Guilty because the record establishes that there was no need for Respondent to instruct Rivera, Albergottie and Brauer that they had to go to the on duty desk officer to have their arrest paperwork signed. The Advocate did not dispute Respondent's contention that Rivera, Albergottie and Brauer were all experienced officers who, having made numerous arrests, were familiar with the procedures regarding supervisory approval of their arrest paperwork. Moreover, these three officers were trained at the Police Academy that forgery is a crime. As a result, they were, or should

have been, aware that no one was permitted to forge a supervisor's signature on any document for any reason.

These three officers were also trained at the Police Academy about the duties of the desk officer. Under the Patrol Guide, the desk officer is responsible for all police operations within the command during the desk officer's tour² including supervising arrest processing.³ Based on their training, these three officers were aware, or should have been aware, that in their supervisor's absence they were required to present their arrest paperwork to the on duty desk officer. In this regard, I find it highly significant that the words "Signature of Desk Officer" are typed directly underneath the signature line on the Supporting Deposition forms (DX 1-4). This would have alerted all of the officers that in the absence of their supervisor, the Supporting Deposition forms had to be presented to and signed by the desk officer.

Lastly, the Advocate asserted that Respondent is guilty of this charge because he was required to, but did not, inform the on duty desk officer that he was leaving and that the three officers he had been supervising had not yet completed their arrest paperwork. This argument is inconsistent with the wording of the charge, the evidence presented by the Department, and the above-cited provisions of the Patrol Guide. The charge only alleges that Respondent failed to properly instruct the officers he was supervising and makes no reference to the desk officer. As to the evidence, Respondent asserted that he did inform the on duty desk officer that he was leaving and that his team had not yet completed their arrest paperwork and Department witness Gonzalez conceded that he

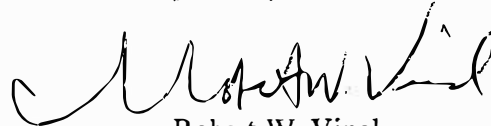
² Patrol Guide Procedure 202-14 (3).

³ Patrol Guide Procedure 202-14 (6).

never interviewed the desk officer who was on duty at the time Respondent signed out. Finally, since the Patrol Guide mandates that the desk officer is responsible for all police personnel and all prisoners lodged within the command during the desk officer's tour, Respondent was not required to inform the desk officer that he was leaving and that his team had not yet completed their arrest paperwork.

Based on the above, Respondent is found Not Guilty.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

APPROVED
JAN 10 2012

RAYMOND W. KELLY
POLICE COMMISSIONER